

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
The Commercial Mobile Alert System	)	PS Docket No. 07-287
	)	
	)	PS Docket No. 08-146
	)	

**ORDER**

**Adopted: November 21, 2014**

**Released: November 21, 2014**

By the Chief, Public Safety and Homeland Security Bureau:

**I. Introduction**

1. Pursuant to the Warning, Alert, and Response Network (WARN) Act,<sup>1</sup> the Federal Communications Commission (Commission) required commercial mobile service (CMS) providers electing to participate in the Wireless Emergency Alert (WEA) system<sup>2</sup> to have had the capability to receive and transmit WEA alerts to their subscribers consistent with their elections by April 7, 2012 (April 7 deadline).<sup>3</sup> We have received jointly filed petitions for waiver of the April 7 deadline from

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<sup>1</sup> See Warning, Alert, and Response Network Act, Title VI of the Security and Accountability for Every Port Act of 2006, Pub. L. No. 109-347, 120 Stat. 1884 (2006); see also Executive Order 13407 of June 26, 2006, Public Alert and Warning System, 71 FR 36975, June 26, 2006.

<sup>2</sup> WEA had been previously known as the Commercial Mobile Alert System (CMAS).

<sup>3</sup> The FCC's rules include requirements for each of the carriers to allow them to transmit WEA alerts – via the CMS provider's Gateway (which receives alerts from the Federal Emergency Management Agency's (FEMA) Integrated Public Alert and Warning System (IPAWS) Alert Aggregator Gateway and thus serves as the entry point for WEA alerts into the CMS provider's network), the CMS provider's infrastructure and the CMS provider's handsets. A detailed summary of the WEA architecture is contained in the *First Report and Order* in this docket. See *The Commercial Mobile Alert System*, PS Docket No. 07-287, *First Report and Order*, 23 FCC Rcd 6144, 6149-51 ¶¶ 10-13 (2008) (*First Report and Order*). Section 10.11 of the Commission's rules, 47 C.F.R. § 10.11, required participating CMS providers to begin to develop and test the WEA no later than 10 months from the date that FEMA makes available design specifications for interfacing with its IPAWS Alert Aggregator Gateway (referred to as the "C" interface, see *infra* note 8), which allows FEMA to deliver alerts to participating CMS providers. The end of that development and testing period triggered an implementation and deployment period, not exceeding 18 months, culminating in the availability of the WEA system to the public. See *The Commercial Mobile Alert System, Third Report and Order*, 23 FCC Rcd 12561, 12582-83, ¶ 53 (2008) (*Third Report and Order*). The end of this total 28-month period was April 7, 2012. See FCC's Public Safety and Homeland Security Bureau Sets Timetable in Motion for Commercial Mobile Service Providers To Develop a System That Will Deliver Alerts to Mobile Devices, PS Docket No. 07-287, *Public Notice*, 24 FCC Rcd 14388 (PSHSB 2009). Accordingly, CMS providers that elected to participate in WEA should have fulfilled those requirements and been ready to deliver WEA alerts to the public in their entire service area (*i.e.*, if they elected to transmit WEA in whole) or in a portion of that area (*i.e.*, if they elected to transmit WEA in part), by April 7, 2012.

Thumb Cellular, LLC and Agri-Valley Communications, Inc. (collectively, “Thumb Cellular”);<sup>4</sup> Northeast Communications of Wisconsin, Inc., Nsight Spectrum, LLC, Nsighttel Wireless, LLC, Brown County MSA Cellular Limited Partnership, Wausau Cellular Telephone Company Limited Partnership, Wisconsin RSA No. 4 Limited Partnership, Wisconsin RSA-10 Limited Partnership, Northeast Tower, LLC, and New-Cell, Inc. dba Cellcom (collectively, “Northeast Communications”);<sup>5</sup> Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc. (collectively, “Sagebrush”);<sup>6</sup> and RSA 1 Limited Partnership d/b/a Chat Mobility, Iowa RSA 2 Limited Partnership d/b/a Chat Mobility and Northwest Missouri Cellular Limited Partnership d/b/a Northwest Cell collectively (“Chat Mobility/Northwest Cell”)<sup>7</sup> (collectively Petitioners). Petitioners seek a waiver of the April 7 deadline for the period of time between the April 7 deadline and the date on which each Petitioner was able to provide WEA messages. For the reasons set forth below, the Public Safety and Homeland Security Bureau (Bureau) grants these petitions.

## II. Background

2. In order to deliver WEA alerts to their subscribers, a participating wireless carrier must establish a secure, Internet-based connection with FEMA’s Integrated Public Alert and Warning System (IPAWS) Alert Aggregator Gateway (gateway). A necessary predicate for carrier connection to the IPAWS gateway is successful execution of two contractual agreements: the Memorandum of Agreement (MOA) and the Interconnection Security Agreement (ISA). The MOA is between the carrier and FEMA and establishes the terms governing the management, operation, and security of a connection between the carrier and IPAWS for the delivery of WEA alerts. The ISA is between the carrier on one side and FEMA and the Department of Homeland Security (DHS) on the other, and addresses the security requirements for the virtual private network (VPN) that DHS sets up to act as the “C” interface<sup>8</sup> between the carrier’s gateway - or a gateway provided to the carrier by a third party provider (TPP) - and the IPAWS gateway.<sup>9</sup> If a carrier is using a TPP to provide its gateway, only the TPP enters into the ISA

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<sup>4</sup> See Thumb Cellular, LLC and Agri-Valley Communications, Inc., Request for Waiver, PS Docket Nos. 07-287 and 08-146 (filed Aug. 10, 2012) (Thumb Cellular Petition).

<sup>5</sup> See Northeast Communications of Wisconsin, Inc., Nsight Spectrum, LLC, Nsighttel Wireless, LLC, Brown County MSA Cellular Limited Partnership, Wausau Cellular Telephone Company Limited Partnership, Wisconsin RSA No. 4 Limited Partnership, Wisconsin RSA-10 Limited Partnership, Northeast Tower, LLC, and New-Cell, Inc. dba Cellcom, Request for Waiver, PS Docket Nos. 07-287 and 08-146 (filed Aug. 15, 2012) (Northeast Communications Petition).

<sup>6</sup> See Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc., Request for Waiver, PS Docket Nos. 07-287 and 08-146 (filed Aug. 10, 2012) (Sagebrush Petition). On September 10, 2012 Sagebrush supplemented its waiver request (Sagebrush Waiver Petition Supplement). For the purposes of our response to the Sagebrush Waiver Petition, the Bureau also takes notice of the responses that Sagebrush filed to a Letter of Inquiry dated July 5, 2012, from Thomas Beers, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau. The two Sagebrush responses are dated July 19, 2012 (Sagebrush LOI Response 1) and September 10, 2012 (Sagebrush LOI Response 2), respectively.

<sup>7</sup> See RSA 1 Limited Partnership d/b/a Chat Mobility, Iowa RSA 2 Limited Partnership d/b/a Chat Mobility, and Northwest Missouri Cellular Limited Partnership d/b/a NorthwestCell, Request for Waiver and Extension of Time to Implement WEA, PS Docket Nos. 07-287 and 08-146 (filed Aug. 15, 2012) (Chat Mobility/NorthwestCell Petition).

<sup>8</sup> As explained in the *First Report and Order*, the “C” interface represents the secure, Internet-based connection over which WEA messages are delivered from the IPAWS Gateway and the CMS Provider Gateway. See *First Report and Order*, 23 FCC Red 6149-50, ¶ 10 n.33. The “C” interface utilizes common protocols to ensure that the alert information that flows from the IPAWS Gateway and the CMS providers is secure and accurate. See *id.*

<sup>9</sup> See 47 C.F.R. § 10.10(g).

with FEMA and DHS. One TPP may have multiple carrier clients. Each document type (MOA and ISA) has a test phase version and a production phase version, each of which must be separately negotiated and executed. According to FEMA, the test phase documents had a “notional timeline” for completion, *i.e.* FEMA’s best estimate, of approximately eight weeks from execution by the carrier to completion of testing.<sup>10</sup> Similarly, the production phase documents had a “notional timeline” for completion of approximately seven weeks from execution by the carrier to completion of production testing.<sup>11</sup>

3. Thumb Cellular and Northeast Communications both use InterOp Technologies (“InterOp”) as their TPP, and both seek a waiver of the April 7 deadline from April 7, 2012 to the date by which InterOp had completed the WEA gateway interconnection requirements and FEMA’s testing of the WEA transmission/connection capability.<sup>12</sup> These parties indicate that they had begun the process of becoming WEA-compliant in July 2011 and December 2011, respectively, had all necessary equipment and software in place, had MOAs with FEMA that were fully executed in January 2012, and were otherwise ready to provide WEA service by the April 7 deadline.<sup>13</sup> Thumb Cellular and Northeast Communications note that InterOp’s WEA connection to FEMA was completed on or about May 1, 2012, and has been operational since that time.<sup>14</sup>

4. Sagebrush seeks a waiver of the April 7 deadline for the time period it took for its TPP, Intrado, to complete the WEA gateway interconnection requirements, including FEMA’s testing of the WEA transmission/connection capability, for Sagebrush to receive an executed MOA from FEMA, and for Sagebrush to be able to obtain WEA-compliant handsets.<sup>15</sup> Sagebrush indicates that it had begun the process of becoming WEA-compliant in May 2011,<sup>16</sup> and had executed an MOA on April 3, 2012, which was forwarded to FEMA by Intrado.<sup>17</sup> Sagebrush indicates that Intrado’s WEA connection to FEMA was not completed until July 18, 2012,<sup>18</sup> and that FEMA did not deliver an executed MOA to Sagebrush until August 30, 2012.<sup>19</sup>

5. Chat Mobility/Northwest Cell seeks a waiver of the April 7 deadline for the period of time between the April 7 deadline and the completion of the WEA gateway interconnection requirements, including FEMA’s testing of the WEA transmission/connection capability, and transition to a new

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<sup>10</sup> FEMA, Integrated Public Alert and Warning System, CTIA WEA Deployment Webinar, Feb. 16, 2012, at 13.

<sup>11</sup> *Id.*

<sup>12</sup> See Thumb Cellular Petition at 1-2; see also Northeast Communications Petition at 1-2.

<sup>13</sup> See Thumb Cellular Petition at 1; see also Northeast Communications Petition at 2.

<sup>14</sup> See Thumb Cellular Petition at 2, n.8; see also Northeast Communications Petition at 3, n.15.

<sup>15</sup> See Sagebrush Petition at 2-5.

<sup>16</sup> See *id.* at 2 (“[Sagebrush] [c]arriers began their efforts to support the development and deployment of the WEA by executing a Statement of Work (SOW) agreement with Intrado on May 15, 2011 . . .”).

<sup>17</sup> See *id.* at 3.

<sup>18</sup> See *id.* at 3-4.

<sup>19</sup> See Sagebrush Waiver Petition Supplement. Sagebrush also argues that its waiver should extend until September 1, 2012, due to its inability to deliver WEA capable handsets to its customers until that time. See Sagebrush Petition at 4. We need not address this request, as the delay in the delivery of an executed MOA to Sagebrush until August 30, 2012, rendered moot any need that Sagebrush may have had for a waiver of the April 7, 2012 deadline due to any delay it may have experienced, as a smaller provider with limited buying power, in obtaining WEA-capable handsets. See Sagebrush LOI Response 2.

switching platform.<sup>20</sup> More specifically, Chat Mobility/Northwest Cell indicates that Chat Mobility and NorthwestCell used their jointly-owned switching provider, Hawkeye Switching, LLC (“Hawkeye”), to provide the “C” interface between the carrier’s gateway and IPAWS.<sup>21</sup> Chat Mobility/NorthwestCell indicates that Hawkeye initially contacted FEMA to begin discussions regarding documentation and procedures by which it could serve as the “C” interface gateway in October 2011,<sup>22</sup> delivered the executed test and production ISAs to FEMA in March 2012, and that executed MOAs also were delivered to FEMA in March 2012.<sup>23</sup> Chat Mobility/NorthwestCell further indicates, however, that before FEMA/DHS could establish a secure VPN with Hawkeye to commence testing of the WEA transmission/connection capability, Hawkeye learned from its vendor that its then-current switching platform was being phased out and would no longer be supported.<sup>24</sup> Hawkeye accordingly elected to migrate to a new platform. Chat Mobility/Northwest Cell thus requests a waiver of the April 7 deadline sufficient to accommodate the transition to Hawkeye’s newer platform, which Chat Mobility/NorthwestCell notified the Bureau occurred as of February 25, 2014.<sup>25</sup>

### III. Discussion

6. Under Section 1.925 of the Commission’s rules, in order to obtain waiver relief, a petitioner must demonstrate that “the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that the grant of waiver would be in the public interest,” or that, “in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”<sup>26</sup> The applicant faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>27</sup>

7. We find that Thumb Cellular, Northeast Communications, Sagebrush, and Chat Mobility/NorthwestCell all meet the standard for waiver of the April 7 deadline under the first prong of section 1.925 of the Commission’s rules with regard to their connection to the WEA gateway.<sup>28</sup> The underlying purpose of the April 7 deadline was to ensure that consumers have access to WEA alerts over their mobile devices in as timely a fashion as possible.<sup>29</sup> As noted above, Thumb Cellular, Northeast Communications, Sagebrush, and Chat Mobility/NorthwestCell all indicate that they signed their MOA with FEMA prior to the April 7 deadline.<sup>30</sup> Thumb Cellular, Northeast Communications and Sagebrush

<sup>20</sup> See Chat Mobility/NorthwestCell Petition at 2-6.

<sup>21</sup> See *id.* at 2-3.

<sup>22</sup> See *id.* at 3.

<sup>23</sup> See *id.* at 4.

<sup>24</sup> See *id.* at 5.

<sup>25</sup> See Letter from Gregory W. Whiteaker, Herman and Whiteaker, LLC, to David G. Simpson, Chief, Public Safety and Homeland Security Bureau, FCC, PS Docket Nos. 07-287 and 08-146 (filed March 24, 2014) at 2.

<sup>26</sup> 47 C.F.R. § 1.925.

<sup>27</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

<sup>28</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>29</sup> See *Third Report and Order*, 23 FCC Rcd 12561, 12582-83, ¶ 53 (2008) (“[T]he WEA timeline rules that we adopt today” are related to “the need to ensure timely deployment of CMAS.”).

<sup>30</sup> See Thumb Cellular Petition at 1; Northeast Communications Petition at 2; Sagebrush Petition at 3; Chat Mobility/NorthwestCell Petition at 4.

hired their TPP, and in the case of Chat Mobility/NorthwestCell, initiated the process with FEMA many months before that deadline, well within the time necessary to meet FEMA's estimated timeline to implement an ISA with the TPP.<sup>31</sup>

8. Moreover, Petitioners' failure to meet the April 7 deadline resulted largely from circumstances beyond their control. Thumb Cellular and Northeast Communications' inability to meet the April 7 deadline appears to stem from delays experienced by their third party TPP in completing FEMA's testing of the WEA transmission/connection capability.<sup>32</sup> Chat Mobility/Northwest Cell's ability to complete the "C" interface process with FEMA was significantly delayed by the unforeseen need to migrate its switching platform.<sup>33</sup> Similarly, Sagebrush experienced delays not only with its TPP's ability to obtain an executed ISA,<sup>34</sup> but also experienced delays in receiving an executed MOA from FEMA.<sup>35</sup> In all cases, the TPPs, or switching entity providing the "C" interface between the carrier's gateway and IPAWS, appear to have taken numerous steps to complete the ISA process in a timely manner.<sup>36</sup>

9. Because these petitioners largely proceeded in a reasonably timely and diligent manner to meet the deadline and because they were unable to meet the deadline due to unexpected circumstances beyond their control, we find that the underlying purpose of the rules would not be served by holding these petitioners to the April 7 deadline. Given the voluntary nature of WEA participation, penalizing petitioners because of circumstances beyond their control would in fact have the adverse effect of motivating carriers *not* to participate in WEA. This would clearly frustrate the timely deployment of WEA. Moreover, because of WEA's extensive public safety benefits, we find that promoting carrier participation in WEA to the greatest extent possible is consistent with the public interest.

10. Because Thumb Cellular, Northeast Communications, Sagebrush and Chat Mobility/NorthwestCell are now connected to FEMA's gateway and able to send WEA alerts to their subscribers, we grant them waiver relief for that period of time between the April 7, 2102, deadline and the dates indicated above by which each of the Petitioners confirmed they became fully compliant with WEA.

#### IV. Ordering Clauses

11. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.41 and 1.925 of the Commission's rules, 47 C.F.R. §§ 1.41, 1.925, THIS ORDER in PS Docket No. 07-287 IS ADOPTED.

12. IT IS FURTHER ORDERED that the Petition jointly filed by Thumb Cellular, LLC, and Agri-Valley Communications, Inc., the Petition jointly filed by Northeast Communications of Wisconsin, Inc., Nsight Spectrum, LLC, Nsighttel Wireless, LLC, Brown County MSA Cellular Limited Partnership, Wausau Cellular Telephone Company Limited Partnership, Wisconsin RSA No. 4 Limited Partnership, Wisconsin RSA-10 Limited Partnership, Northeast Tower, LLC, and New-Cell, Inc. dba Cellcom, the Petition jointly filed by Sagebrush Cellular, Inc., Nemont Communications, Inc., and Triangle Communication System, Inc., and the Petition jointly filed by and RSA 1 Limited Partnership d/b/a Chat

<sup>31</sup> See Thumb Cellular Petition at 1; Northeast Communications Petition at 2; Sagebrush Petition at 2; Chat Mobility/NorthwestCell Petition at 3.

<sup>32</sup> See Thumb Cellular Petition at 1-2; Northeast Communications Petition at 2-3; *supra* note 19.

<sup>33</sup> See Chat Mobility/NorthwestCell Petition at 5-6.

<sup>34</sup> See Sagebrush Petition at 2-4.

<sup>35</sup> See Sagebrush LOI Response 2.

<sup>36</sup> See Thumb Cellular Petition at 2-3; Northeast Communications Petition at 3-4; Sagebrush Petition at 3-4; Chat Mobility/NorthwestCell Petition at 3-5.

Mobility, Iowa RSA 2 Limited Partnership d/b/a Chat Mobility, and Northwest Missouri Cellular Limited Partnership d/b/a NorthwestCell, ARE GRANTED to the extent set forth herein.

13. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David G. Simpson  
Rear Admiral (Ret.), USN  
Chief, Public Safety and Homeland Security Bureau